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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/868,026

01/11/2002

Jean-Luc Ridet

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12/08/2003

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EXAMINER

NICHOLS, CHRISTOPHER J

ART UNIT

PAPER NUMBER

1647

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/868,026

Applicant(s)

RIDET ET AL.

Examiner

Christopher Nichols, Ph.D.

Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-32 is/are pending in the application.
- 4a) Of the above claim(s) 14-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-4 and 6-32 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Status of Application, Amendments, and/or Claims

1. The Response and Amendment filed 30 October 2003 has been received and entered in full. Claim 1 has been amended and claim 5 has been cancelled. Claims 1-4 and 6-13 are under examination. Claims **14-32** remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the Response filed 17 April 2003.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Withdrawn Rejections And/Or Objections

3. The Rejection of claim **5** under 35 U.S.C. §102(b) as set forth at pp. 2-3 ¶3 in the previous Office Action (30 June 2003) is *moot* in view of Applicant's cancellation of said claim (30 October 2003).

Maintained Rejections And/Or Objections

4. Claims **1, 2, 3, 4, 6, and 13** are rejected under 35 U.S.C. 102(b) as being anticipated by De Groot *et al.* (1997) "Establishment of Human Adult Astrocyte Cultures Derived from Postmortem Multiple Sclerosis and Control Brain and Spinal Cord Regions: Immunophenotypical and Functional Characterization" Journal of Neuroscience Research **49**:

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342-354 (**IDS #BU**) for the reasons as set forth at pp. 2-3 ¶3 in the previous Office Action (30 June 2003).

5. Applicant traverses this rejection in the Response filed 30 October 2003 on the following grounds: **(a)** De Groot *et al.* teaches a method that includes a preliminary step of incubating the dissociated cells for 2 hours to facilitate removal of monocytes/macrophages. Applicant argues that the instant claims require the dissociated cells to be incubated directly on a flask not allowing for any preliminary incubation step as taught by De Groot *et al.*

6. Applicant's arguments have been taken into consideration and are not found persuasive because the instant claims do not require the dissociated cells to be incubated directly on a flask to the exclusion of additional steps. The transitional phrase of claim 1 is "comprising" and therefore represents "open claim" language that only requires, *per se*, that the steps reiterated therein be present to be practiced (see MPEP §2111.03). Further, De Groot *et al.* teaches that the cell mixture removed following the 2-hour preliminary step includes "unattached cells" which can include microglial cells. Thus although De Groot *et al.* does indeed include an additional step prior to the 48 hour incubation it does not preclude its anticipated of the instant claims due to the instant "open" claim language.

7. The rejection of claims 1, 2, 3, 4, 6, and 13 are rejected under 35 U.S.C. §102(b) is hereby maintained.

8. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Groot *et al.* (1997) "Establishment of Human Adult Astrocyte Cultures Derived from Postmortem Multiple Sclerosis and Control Brain and Spinal Cord Regions: Immunophenotypical and

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Functional Characterization” Journal of Neuroscience Research **49**: 342-354 (IDS #BU) in view of US 5627047 (6 May 1997) Brenner *et al.* and US 5202120 (13 April 1993) Silver *et al.* for the reasons as set forth at pp. 3-5 ¶4-11 in the previous Office Action (30 June 2003).

9. Applicant traverses this rejection in the Response filed 30 October 2003 on the following grounds: (a) De Groot *et al.* teaches a method that includes a preliminary step of incubating the dissociated cells for 2 hours to facilitate removal of monocytes/macrophages. Applicant argues that the instant claims require the dissociated cells to be incubated directly on a flask not allowing for any preliminary incubation step as taught by De Groot *et al.*

10. Applicant’s arguments have been taken into consideration and are not found persuasive because the instant claims do not require the dissociated cells to be incubated directly on a flask to the exclusion of additional steps. The transitional phrase of claim 1 is “comprising” and therefore represents “open claim” language that only requires, *per se*, that the steps reiterated therein be present to be practiced (see MPEP §2111.03). Further, De Groot *et al.* teaches that the cell mixture removed following the 2-hour preliminary step includes “unattached cells” which can include microglial cells. Thus although De Groot *et al.* does indeed include an additional step prior to the 48 hour incubation it does not preclude its anticipated of the instant claims due to the instant “open” claim language.

11. The rejection of claims 7-12 are rejected under 35 U.S.C. §102(b) is hereby maintained.

Summary

12. Claims 1-4 and 6-13 are hereby rejected.

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13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

14. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Christopher James Nichols, Ph.D.** whose telephone number is 703-305-3955. The examiner can normally be reached on Monday through Friday, 8:00AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gary Kunz, Ph.D.** can be reached on 703-308-4623. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9307 for After Final communications. The fax phone numbers for the customer service center is 703-872-9305.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

CJN
December 1, 2003

Elizabeth C. Kemmerer

ELIZA. KEMMERER
PRINCIPAL EXAMINER